

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

354B0446

SENATE BILL NO. 102

Introduced by: Senators Lange, Albers, Dennert, Hutmacher, Kloucek, Olson, Staggers,
Symens, Valandra, and Vitter and Representatives Chicoine, Apa, Belatti,
Cerny, Fischer-Clemens, Hagen, Peterson (Bill), Schrempp, and Weber

1 FOR AN ACT ENTITLED, An Act to clarify certain principles pertaining to self-defense and
2 defense of third persons within the home and on owned, leased, or rented real property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The owner, lessee, or renter of real property or a member of the owner's, lessee's,
5 or renter's family who resides on the property is not liable in damages to a trespasser on the
6 property, to a member of the family of the trespasser, or to any other person in a tort action for
7 injury, death, or loss to person or property of the trespasser that allegedly is caused by the
8 owner, lessee, renter, or family member if, at the time the injury, death, or loss to person or
9 property allegedly is caused, all of the following apply:

10 (1) The owner, lessee, renter, or family member is inside a building or other structure on
11 the property that is maintained as a permanent or temporary dwelling;

12 (2) The trespasser has made, is making, or is attempting to make an unlawful entry into
13 the building or other structure; and

14 (3) The owner, lessee, renter, or family member uses reasonably necessary force to repel
15 the trespasser from the building or other structure or to prevent the trespasser from

1 making the unlawful entry into that building or other structure.

2 Section 2. For purposes of the immunity created by section 1 of this Act, reasonably
3 necessary force to repel a trespasser from a building or other structure that is maintained as a
4 permanent or temporary dwelling or to prevent a trespasser from making an unlawful entry into
5 a building or other structure of that nature includes the taking of or attempting to take the
6 trespasser's life, or causing or attempting to cause physical harm or serious physical harm to the
7 person of the trespasser, if the owner, lessee, or renter of real property or a member of the
8 owner's, lessee's, or renter's family who resides on the property has a reasonable good faith belief
9 that the owner, lessee, or renter or a member of the owner's, lessee's, or renter's family is in
10 imminent danger of death or serious physical harm and that the only means to escape from the
11 imminent danger is to use deadly force or other force that likely will cause physical harm or
12 serious physical harm to the trespasser, even if the owner, lessee, renter, or family member is
13 mistaken as to the existence or imminence of the danger of death or serious physical harm.

14 Section 3. In order to qualify for the immunity created by section 1 of this Act, an owner,
15 lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who
16 resides on the property is not required to retreat from a building or other structure that is
17 maintained as a permanent or temporary dwelling before using reasonably necessary force to
18 repel a trespasser from the building or other structure or to prevent a trespasser from making an
19 unlawful entry into the building or other structure.

20 Section 4. The owner, lessee, or renter of real property or a member of the owner's, lessee's,
21 or renter's family who resides on the property is not liable in damages to a trespasser on the
22 property, to a member of the family of the trespasser, or to any other person in a tort action for
23 injury, death, or loss to person or property of the trespasser that allegedly is caused by the
24 owner, lessee, renter, or family member under circumstances not covered by section 1 of this Act
25 if, at the time the injury, death, or loss to person or property allegedly is caused, none of the

1 following applies:

- 2 (1) The injury, death, or loss to person or property is caused by a physical assault of the
3 owner, lessee, renter, or family member upon the trespasser other than in self-defense
4 or defense of a third person;
- 5 (2) Self-defense or defense of a third person is not involved, and the injury, death, or loss
6 to person or property is caused by a vehicle driven or otherwise set in motion, a
7 firearm shot, or any other item of tangible personal property held, driven, set in
8 motion, projected, or thrown by the owner, lessee, renter, or family member with the
9 intent to cause injury, death, or loss to person or property of the trespasser or with
10 the intent to cause the trespasser to believe that the owner, lessee, renter, or family
11 member would cause injury, death, or loss to person or property of the trespasser; or
- 12 (3) Under circumstances not described in subdivisions (1) or (2) of this section,
13 self-defense or defense of a third person is not involved, and the owner, lessee, renter,
14 or family member intends to create a risk of injury, death, or loss to person or
15 property of any trespasser by direct or indirect means, including the use of spring
16 guns, traps, or other dangerous instruments.

17 Section 5. This Act does not create a new cause of action or substantive legal right against
18 the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's
19 family who resides on the property. This Act does not affect any civil liability under any other
20 provision of law of an owner, lessee, or renter of real property or a member of the owner's,
21 lessee's, or renter's family who resides on the property with respect to individuals other than
22 trespassers, including civil liability to invitees or licensees. This Act does not affect any
23 immunities from or defenses to civil liability under any other provision of law to which the
24 owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family
25 who resides on the property may be entitled with respect to individuals other than trespassers,

1 including immunities from or defenses to civil liability to invitees or licensees. This Act does not
2 affect any criminal liability that the owner, lessee, or renter of real property or a member of the
3 owner's, lessee's, or renter's family who resides on the property may have for injury, death, or
4 loss to person or property of a trespasser, invitee, or licensee on the property. This Act does not
5 affect any immunities from or defenses to civil liability established by any other provision of law
6 to which an individual other than the owner, lessee, or renter of real property or a member of the
7 owner's, lessee's, or renter's family who resides on the property may be entitled in connection
8 with injury, death, or loss to person or property of a trespasser on real property owned, leased,
9 or rented by another person, including self-defense or defense of third persons.

10 Section 6. The immunities from tort liability that are contained in this Act apply only to
11 causes of action for injury, death, or loss to person or property allegedly caused to a trespasser
12 on or after the effective date of this Act by the owner, lessee, or renter of real property or a
13 member of the owner's, lessee's, or renter's family who resides on the property. With respect to
14 causes of action for injury, death, or loss to person or property allegedly caused to a trespasser
15 before the effective date of this Act by the owner, lessee, or renter of real property or a member
16 of the owner's, lessee's, or renter's family who resides on the property, the liability or immunity
17 from liability of, and any defenses available to, the owner, lessee, renter, or family member shall
18 be determined as if this Act had not been enacted.